

# FERMILAB SERVICES SUBCONTRACT TERMS AND CONDITIONS

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## 1. PAYMENTS

**1.1** Once each month (or at more frequent intervals, if approved by Fermilab), the Subcontractor may submit to the Manager invoices or vouchers in such form and detail and supported by such documents as provided below. Within 30 days after receipt of each invoice or voucher Fermilab shall, subject to the provisions of this subcontract, make payment thereon as approved by Fermilab.

**1.2** In connection with any discount offered, time will be computed from the date of completion of the performance of the services or from the date correct invoice or voucher is received at the office specified by Fermilab, whichever is later. Payment is made, for discount purposes, when the check is mailed.

**1.3** At any time prior to final settlement under this subcontract, representatives of Fermilab or its designees will have access to and the right to audit Subcontractor's invoices, vouchers, statement of cost, books and records to determine the correctness and propriety of payments made under this subcontract. Each payment theretofore made shall be subject to adjustment for amounts included in the related invoice or voucher on the basis of such audit. Any payment may be reduced for overpayments, or increased for under payments, on preceding invoices or vouchers.

**1.4** **APPLICABLE CREDITS.** The Subcontractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Subcontractor or any assignee under this subcontract shall be paid by the Subcontractor to Fermilab, to the extent that they are properly allocable to costs for which the Subcontractor has been reimbursed by Fermilab under this subcontract. Reasonable expenses incurred by the Subcontractor for

the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by Fermilab.

**1.5** **CLAIMS FOR PAYMENTS.** Claims for payment shall be accompanied by such supporting documents and justification as Fermilab shall require.

## 1.6 INVOICING.

(a) All invoices for labor shall show the crafts and classifications furnished, and the consolidated number of hours worked by each craft and classification against each Job Order. Consolidated invoices for labor and other costs submitted for payment shall be substantiated by individual daily job time cards showing the number of hours worked, approved by a representative of the technical section for whom the work is being accomplished and should refer to the applicable Job Order number established by the Manager. Subcontractor shall maintain detailed, complete, and accurate accounting records on a Job Order basis satisfactory to Fermilab.

(b) The Subcontractor shall submit invoices bearing this subcontract number, in duplicate, to Manager, Fermilab, P.O. Box 500, Batavia, Illinois 60510.

## 2. WORKMANSHIP AND SAFETY

All work under this subcontract shall be performed in a skillful, safe, and workmanlike manner. Fermilab may require (in writing) the Subcontractor to remove any employee which the Manager deems incompetent, careless, or otherwise objectionable.

## 3. TERMINATION FOR CONVENIENCE OF FERMILAB

Fermilab, by written notice, may terminate this subcontract, in whole or in part, when it is in Fermilab's interest. If this subcontract is terminated, Fermilab shall be liable only for payment under the payment provisions of this subcontract for services rendered before the effective date of termination.

## 4. DEFAULT

**4.1** (a) Fermilab may, subject to paragraphs 4.3 and 4.4 following, by written notice of default to the Subcontractor, terminate this subcontract in whole or in part if the Subcontractor fails to:

- (i) Deliver the supplies or to perform the services within the time specified in this subcontract or any extension;
- (ii) Make progress, so as to endanger performance of this subcontract; or
- (iii) Perform any of the other provisions of this subcontract

(b) Fermilab's right to terminate this subcontract under subdivisions 4.1 (a) (ii) and 4.1 (a) (iii) above, may be exercised if the Subcontractor does not cure such failure within 10 days (or more if authorized in writing by Fermilab) after receipt of the notice from Fermilab specifying the failure.

**4.2** If Fermilab terminates this subcontract in whole or in part, it may acquire, under the terms and in the manner it considers appropriate, supplies or services similar to those terminated, and the Subcontractor will be liable to Fermilab for any excess costs for those supplies or services. However, the Subcontractor shall continue the work not terminated.

**4.3** Except for defaults of sub-subcontractors at any tier, the Subcontractor shall not be liable for any excess costs if the failure to perform the subcontract arises from causes beyond the control and without the fault or negligence of the Subcontractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in its sovereign capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Subcontractor.

**4.4** If the failure to perform is caused by the default of a sub-subcontractor at any tier, and if the cause of the default is beyond the control of both the Subcontractor and sub-subcontractor, and without the fault or negligence of either, the Subcontractor shall not be liable for any excess costs for failure to perform, unless the sub-subcontracted supplies or services were obtainable from other sources in sufficient time for the Subcontractor to meet the required delivery schedule.

**4.5** If this subcontract is terminated for default, Fermilab may require the Subcontractor to transfer title to the Government, and deliver to Fermilab, as directed by it, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Subcontractor has specifically produced or acquired for the terminated portion of this subcontract. Upon direction of Fermilab, the Subcontractor shall also protect and preserve property in its possession in which the Government or Fermilab has an interest.

**4.6** Fermilab shall pay the subcontract price for completed supplies delivered and accepted. The Subcontractor and Fermilab shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Fermilab may withhold from these amounts any sum it determines to be necessary to protect it against loss because of outstanding liens or claims of former lien holders.

**4.7** If, after termination, it is determined that the Subcontractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Fermilab.

**4.8** The rights and remedies of Fermilab in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

## **5. PERMITS**

Except as otherwise directed by Fermilab, Subcontractor shall, without any additional expense to Fermilab, be responsible for obtaining any necessary licenses and permits and for complying with any applicable Federal, State and municipal laws, codes, regulations, or directives and procedures issued by Fermilab in connection with the prosecution of work.

## **6. HAZARDOUS WASTE DISPOSAL**

The Subcontractor shall comply with all applicable federal, state and local laws and regulations governing the transport, storage, treatment and disposal of regulated waste materials included in, or generated during the performance of this subcontract. These statutes include, but are not limited to, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, Hazardous Materials Transportation Act, the Illinois Environmental Protection Act/Solid and Special Waste Management Regulations, and the laws

and regulations of any other state receiving the subject waste material.

## **7. ENVIRONMENT, SAFETY AND HEALTH (ES&H)**

This clause applies to all subcontract work performed at the Fermilab site.

**7.1 APPLICABILITY.** This clause applies to all subcontract work performed at the Fermilab site. For the purpose of this clause:

- (a) safety encompasses environment, safety, and health, including pollution prevention and waste minimization; and
- (b) employees include sub-subcontractor employees at any tier.

**7.2 ES&H POLICY.** It is Fermilab policy that every Subcontractor employee is entitled to a safe and healthy work environment while on the Fermilab site, and that the Subcontractor retains primary responsibility for the safety of its employees. In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of ES&H functions and activities becomes an integral but visible part of the Subcontractor's work planning and execution process. The Subcontractor shall, in the performance of work, ensure that:

- (a) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and sub-subcontractor employees managing or supervising employees performing work.
- (b) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
- (c) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
- (d) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
- (e) Before work is performed, the associated hazards are evaluated and ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
- (f) Any necessary administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.

**7.3 SUBMISSION OF FORMAL SAFETY MANAGEMENT SYSTEM, HAZARD ANALYSIS OR ES&H PLAN.** In certain circumstances, Fermilab requires, either with the offer or prior to the commencement of on-site work, the submission for Fermilab approval of a documented Safety Management System and/or Hazard Analysis, or other equivalent ES&H Plan. A meeting with the Division/Section Senior Safety Officer and/or Task Manager or other Fermilab officials may also be required prior to the commencement of work to address the administration of ES&H requirements. If any of the above documents and meetings are required, such shall be

identified, together with the required contents and information on submission and approval, elsewhere in this subcontract (e.g., in the scope of work, in the specifications, or in special provisions relating to the work to be performed). If this subcontract contains no such requirements, the Subcontractor shall nevertheless actively promote and enforce a comprehensive safety program for its on-site employees that includes an effective system for initial indoctrination and education of all of its on-site employees in safety and accident prevention, and other ES&H-related requirements found in this clause or elsewhere in this subcontract.

#### **7.4 ES&H COMPLIANCE – “STOP WORK” AND “RESTART WORK” ORDERS.**

- (a) When performing work on the Fermilab site under this subcontract, the Subcontractor shall take all reasonable precautions to protect the health and safety of employees and the public and to minimize the danger from hazards to life and property. The Subcontractor shall comply with all applicable ES&H and fire protection standards and requirements (including reporting requirements) set forth in Federal and State laws and regulations, in any required System, Analysis, or Plan (see 3. above), and elsewhere in this subcontract. Such standards and requirements include, but are not limited to:
  - (i) 40 C.F.R. (U.S. EPA)
  - (ii) 35 I.A.C. (Illinois EPA)
  - (iii) 29 C.F.R. 1910 and 1926 (OSHA)
  - (iv) 49 C.F.R. (DOT)
  - (v) National Fire Protection Association Codes (NFPA)
  - (vi) ANSI Z136.1 – Safe Use of Lasers
  - (vii) ANSI B30 Series – Crane Safety
  - (viii) NFPA70 National Electrical Code, and NFPA70E-Standard for Electrical Safety in the Workplace
  - (ix) Illinois State “Rules of the Road” and the Illinois Vehicle Code.
- (b) The Subcontractor is responsible for compliance with the ES&H requirements applicable to this subcontract regardless of the performer of the work. The Subcontractor shall implement an appropriate system of ES&H inspections of its on-site work areas and employees, and shall promptly evaluate and resolve any noncompliance with requirements. Fermilab reserves the right to conduct, and the Subcontractor shall permit, safety inspections of the work being performed under this subcontract, and may notify the Subcontractor in writing of any noncompliance. If the Subcontractor fails to take timely and appropriate corrective action, or if, at any time, the Subcontractor’s acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Fermilab Division/Section Senior Safety Officer, the Fermilab Task Manager, or any other Fermilab official so authorized by the Fermilab Manager (see clause #1, “Definitions,” of the Fermilab FL-1) may, without prejudice to any other rights of Fermilab, issue an order stopping all or any part of the work. Thereafter, a restart order for resumption of the work may be issued at the discretion of the Fermilab Manager or other Fermilab official authorized by

him/her. No extension of time or compensation for damages by reason of or in connection with such work stoppage will be allowed.

**7.5 TRAINING AND EQUIPMENT.** The Subcontractor is responsible for the provision of any necessary safety training, medical surveillance, and safety equipment for employees. The only exception involves hazards which are unusual for the trade of the employees. In particular, Fermilab normally provides appropriate training, medical surveillance, and special equipment for employees working in radiation areas or oxygen deficiency hazard areas.

#### **7.6 EMERGENCY AND REPORTING PROCEDURES.**

- (a) Emergency Reporting – In the event of any emergency situation, such as fire, gas release, chemical spill, or medical emergency, call **x3131** from any on-site telephone. From an outside line, call (630) 840-3131.
- (b) Medical Emergencies – Subcontractor employees will obtain their medical care from sources other than Fermilab, except in the case of severe injuries or life-threatening circumstances where the Fermilab paramedic unit is available to respond by calling x3131.
- (c) Incident Reporting – In addition to any other reporting requirements set forth in statutes or regulations or elsewhere in this subcontract, the Subcontractor shall maintain an accurate record of all incidents and submit to the Fermilab Division/Section Senior Safety Officer and/or Fermilab Task Manager, within two days from the time of occurrence on all proper forms as prescribed by Fermilab, all pertinent information on any reportable (as defined by OSHA) injury. The Subcontractor shall notify the above Senior Safety Officer or Task Manager immediately upon the occurrence of any accident resulting in death, occupational injury or illness, or damage to materials, property, supplies and equipment. This immediate notice shall be verbal, followed by written confirmation on the prescribed Fermilab forms.
- (d) Work Hours Reporting – Unless advised otherwise by the Fermilab Manager, the Subcontractor shall report to the Fermilab Task Manager of other Fermilab official designated by the Fermilab Manager and number of hours worked on the Fermilab site by Subcontractor employees and by sub-subcontractor employees at any tier under this subcontract. Such reporting shall be on a monthly basis (submitted by the fifth business day of the month) and in such form or format as prescribed by Fermilab.

**7.7 GOVERNMENT AGENCY INSPECTION.** The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this subcontract. Should any representative of a Government agency, such as an OSHA Compliance Officer, visit the job site, regardless of reason, the Subcontractor shall:

- (a) Immediately (and prior to any inspection, if possible) alert the Division/Section Senior Safety Officer and/or Task Manager that a representative from a Government agency is at the job site. Fermilab reserves the right to be present during any Government agency inspection.
- (b) Advise Fermilab of the reason for the agency’s visit, as an example, an employee complaint, hospitalization of five or more Subcontractor employees, a fatality, or an “at random” inspection.
- (c) Provide Fermilab with a written follow-up report of the

visit. The report should contain the details of the agency's findings, recommendations, citations, etc.

- (d) Provide Fermilab with the Subcontractor's intended action to comply with the agency's recommendations. Copies of all governmental citations and inspection reports shall be promptly sent to Fermilab.

**7.8 HAZARD COMMUNICATION.** Before bringing any hazardous chemical (e.g., flammable, corrosive, reactive, toxic, radioactive, etc.) onto Fermilab property, the Subcontractor shall provide the Division/Section Senior Safety Officer or Task Manager with a Material Safety Data Sheet for the chemical. All chemicals must be properly labeled.

**7.9 GENERAL RULES OF CONDUCT.** While on-site, personnel of the Subcontractor and of sub-subcontractors at any tier shall conduct themselves in a professional manner that does not constitute a hazard to other such personnel, to Fermilab employees or property, or to the public. Such personnel also shall use direct access routes to job sites, shall refrain from disrupting other Fermilab activities and work areas while on-site for the performance of this subcontract, and shall observe all Fermilab regulations and restrictions concerning smoking and the possession or use of alcoholic beverages, narcotics, or any non-prescribed controlled substance. Such personnel shall immediately report to Fermilab any damage to existing Fermilab property that may disrupt Fermilab operations, cause fires, initiate environmental problems, or endanger lives. Fermilab reserves the right to remove, or to order the Subcontractor to remove, any such personnel who repeatedly or flagrantly violates safe work practices and procedures, and the Subcontractor shall not be afforded any extension of time or compensation for damages or other payment by reason of, or in connection with, such removal from the Fermilab site.

**7.10** The Subcontractor agrees to include, or to require the inclusion of, provisions substantially similar to this clause in all sub-subcontracts at any tier under this subcontract which involve the performance of work on the Fermilab site.

## **8. INSURANCE**

This clause applies to all work performed at the Fermilab site.

**8.1** The Subcontractor at his sole cost and expense shall take out and maintain insurance until the work hereunder is completed and is accepted by the Manager.

**8.2** At the signing and delivery of this subcontract, and in any event before any work is performed hereunder, the Subcontractor shall furnish to the Manager certificates of insurance, identified as to subcontract number, as evidence of insurance coverage of the type and in amounts not less than the amounts hereinafter specified:

<b>TYPE OF INSURANCE</b>	<b>COVERAGE</b>
(1) Comprehensive General Liability	Combined Single Limit for Bodily Injury, Personal Injury, and Property Damage - \$500,000 per Occurrence
(2) Automobile Liability	Same as (1)
(3) Workmen's Compensation	As Required by State Law
(4) Employer's Liability (sometimes referred to as "1(b) coverage")	\$500,000 per Insuring Agreement

**8.3** The certificates of insurance shall provide that such insurance will not be cancelled nor any change whatsoever will be made in the policies except upon not less than thirty (30) days

prior notice thereof to Fermilab, mailed to it by certified mail, with postage prepaid, addressed to the Manager, Fermi National Accelerator Laboratory, P.O. Box 500, Batavia, Illinois, 60510.

**8.4** Except for the Workmen's Compensation insurance, all policies shall by appropriate language provide that the United States Government and Fermi Research Alliance, LLC (FRA) are additional insureds, that the insurance afforded by such policies is primary insurance, and that all rights of the insurer for contribution from other insurers of FRA and the Government are waived.

**8.5** Before permitting any sub-subcontractor to perform any work under this subcontract, the Subcontractor shall require that such sub-subcontractor furnish satisfactory evidence that it has taken out and maintains insurance in the same amounts and with the same provisions as required by the preceding paragraph of this clause.

**8.6** The Subcontractor shall indemnify Fermilab for any expense incurred or loss suffered by Fermilab for the failure of the Subcontractor or any sub-subcontractor to comply with the provisions of this clause.

## **9. RESERVED**

### **10. SERVICE CONTRACT ACT OF 1965, AS AMENDED**

**10.1** This subcontract is subject to the Service Contract Act of 1965 as amended, (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

**10.2 (a)** Each service employee employed in the performance of this subcontract by the Subcontractor or any sub-subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this subcontract.

(b) If there is such a wage determination attached to this subcontract, Fermilab shall require that any class of service employee which is not listed therein, and which is to be employed under this subcontract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the Subcontractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and those listed in the wage determination. Such conforming class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph 10.2.

(c) Such conforming procedure shall be initiated by the Subcontractor prior to the performance of subcontract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the Subcontractor to Fermilab no later than 30 days after such unlisted class of employees performs any subcontract work. Fermilab shall review the proposed action and promptly submit a report of the action, together with its recommendation and all pertinent information including the position of the Subcontractor and the employees, through the Department, to the Wage and Hour Division, Employment Standards

Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Department within 30 days of receipt that additional time is necessary.

- (d) The final determination of the conformance action by the Wage and Hour Division shall be transmitted through the Department, to Fermilab which shall promptly notify the Subcontractor of the action taken. Each affected employee shall be furnished by the Subcontractor with a written copy of such determination or it shall be posted as a part of the wage determination.
- (e)
  - (1) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.
  - (2) In the case of a subcontract modification, an exercise of an option or extension of an existing subcontract, or in any other case where a Subcontractor succeeds a subcontract under which the classification in question was previously conformed pursuant to this paragraph 10.2, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the subcontract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of subcontract work by the unlisted class of employees, the Subcontractor shall advise Fermilab of the action taken but the other procedures in paragraph 10.2 (c) of this clause need not be followed.
  - (3) No employee engaged in performing work on this subcontract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.
  - (4) The wage rate and fringe benefits finally determined pursuant to paragraphs 10.2 (b) and (c) of this clause shall be paid to all employees performing in the classification from the first day on which subcontract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the

Wage and Hour Division retroactive to the date such class of employees commenced subcontract work shall be a violation of the Act and this subcontract.

- (f) Upon discovery of failure to comply with paragraphs 10.2 (b) through 10.2 (c) (4) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced subcontract work.

**10.3** If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965, as amended, the term of this subcontract is more than one year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after one year and not less often than once every two years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

**10.4** The Subcontractor or sub-subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

**10.5** In the absence of a minimum wage attachment for this subcontract, neither the Subcontractor nor any sub-subcontractor under this subcontract shall pay any person performing work under the subcontract (regardless of whether they are service employees) less than the minimum wage specified by section 6 (a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this provision shall relieve the Subcontractor or any sub-subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

**10.6** If this subcontract succeeds a subcontract, subject to the Service Contract Act of 1965, as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this subcontract setting forth such collectively bargained wage rates and fringe benefits, neither the Subcontractor nor any sub-subcontractor under this subcontract shall pay any service employee performing any of the subcontract work (regardless of whether or not such employee was employed under the predecessor subcontract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would be entitled if employed under the predecessor subcontract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Subcontractor or sub-subcontractor under this subcontract may be relieved of the foregoing obligation unless the limitations of paragraph 4.1 b (b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in § 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in § 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arms-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8

that some or all of the wages and/or fringe benefits contained in a predecessor Subcontractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor subcontract was not entered into as a result of arm's-length negotiations, the Department of Labor will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the subcontract or sub-subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a subcontract or sub-subcontract (53 Comp. Gen 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

**10.7** The Subcontractor and any sub-subcontractor under this subcontract shall notify each service employee commencing work on this subcontract of the minimum wage and any fringe benefits required to be paid pursuant to this subcontract, or shall post the wage determination attached to this subcontract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the work site. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this subcontract.

**10.8** The Subcontractor or sub-subcontractor shall not permit any part of the services called for by this subcontract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Subcontractor or sub-subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the Subcontractor or sub-subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

**10.9** (a) The Subcontractor and each sub-subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, records containing the information specified in subparagraphs (1) through (6) of this paragraph for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.

- (1) Name and address and social security number of each employee.
- (2) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.
- (3) The number of daily and weekly hours so worked by each employee.
- (4) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.
- (5) A list of monetary wages and fringe benefits for those classes of service employees not

included in the wage determination attached to this subcontract, but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the Labor Standards clause in paragraph 10.2 of this clause. A copy of the report required in paragraph 10.2 (c) of this clause shall be deemed to be such a list.

- (6) Any list of the predecessor Subcontractor's employees which had been furnished to the Subcontractor pursuant to paragraph 10.14(b) of this clause.

(b) The Subcontractor shall also make available a copy of this subcontract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(c) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this subcontract, and in the case of failure to produce such records, Fermilab, upon direction of the Department of Labor and notification to the Subcontractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(d) The Subcontractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

**10.10** The Subcontractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

**10.11** There shall be withheld or caused to be withheld from the Subcontractor under this subcontract or any other subcontract or Government contract with the Subcontractor such sums as an appropriate officer of the Department of Labor requests, or such sums as may be necessary to pay underpaid employees employed by the Subcontractor or any sub-subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, Fermilab may, after authorization or by direction of the Department of Labor and written notification to the Subcontractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965 may be grounds for termination of the right to proceed with the subcontract work. In such event, Fermilab may enter into other subcontracts or arrangements for completion of the work, charging the Subcontractor in default with any additional cost.

**10.12** The Subcontractor agrees to insert these clauses relating to the Service Contract Act of 1965 in all sub-subcontracts subject to the Act.

**10.13 SERVICE EMPLOYEE.** As used in clause 10, the term "service employee" means any person engaged in the performance of this subcontract (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29 Code of Federal

Regulations, as revised. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a Subcontractor or sub-subcontractor and such persons.

**10.14** (a) If wages to be paid or fringe benefits to be furnished any service employees employed by the Subcontractor or any sub-subcontractor under the subcontract are provided for in a collective bargaining agreement which is or will be effective during any period in which the subcontract is being performed, the Subcontractor shall report such fact to Fermilab, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the subcontract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the subcontract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of subcontract performance, such agreements shall be reported promptly after negotiation thereof.

(b) Not less than 10 days prior to completion of this subcontract, the Subcontractor shall furnish to Fermilab a certified list of the names of all service employees on the Subcontractor's or sub-subcontractor's payroll during the last month of subcontract performance. Such list shall also contain anniversary dates of employment on the subcontract either with the current or predecessor Subcontractors of each such service employee. Fermilab shall turn over such list to the successor Subcontractor at the commencement of the succeeding subcontract.

**10.15** Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

**10.16** (a) By entering into this subcontract, the Subcontractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Subcontractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(b) No part of this subcontract shall be sub-subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**10.17** Notwithstanding any of the provisions in paragraphs 10.2 through 10.15 of this clause, relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exceptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(a) (i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act of 1965, without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices,

student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof) applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525);

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

**10.18** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the subcontract work in any craft classification shall not be greater than the ratio permitted to the Subcontractor as to his entire work force under the registered program.

**10.19** An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531; provided, however, that the amount of such credit may not exceed \$1.34 per hour. To utilize this proviso:

- (a) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (b) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (c) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;
- (d) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.



**10.20** Disputes arising out of the labor standards provisions of this subcontract shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the Subcontractor (or any of its sub-subcontractors) and Fermilab, the Department, the U.S. Department of Labor, or the employees or their representatives.

## **11. THEFT**

This clause applies to all work performed at the Fermilab site. Necessary precautions for safeguarding material and equipment will be the responsibility of the Subcontractor. The following procedures are to be followed in the event of theft of Subcontractor property or Fermilab furnished property:

- (a) Immediately notify the Site Patrol by telephone, 630/840-3414.
- (b) Follow this with a written report including:
  - (1) Name and phone number of person making report.
  - (2) Description of missing property; i.e., make and color (if available), model number, serial number and value. Indicate ownership, if Government, furnish Government Identification No.
  - (3) Date and time theft took place or was discovered.
  - (4) Date and time property was last known to be in proper place.
  - (5) Any other information which might be pertinent.
- (c) Submit a copy of report to Manager.

## **12. CHANGES**

**12.1** Fermilab may at any time by a written order, and without notice to the sureties, if any, make changes, within the general scope of this subcontract, in any one or more of the following;

- (a) description of services to be performed;
- (b) time of performance (i.e., hour of the day, days of the week, etc.);
- (c) place of performance of the services.

**12.2** If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, Fermilab shall make an equitable adjustment in the subcontract price, the delivery schedule, or both, and shall modify the subcontract.

**12.3** The Subcontractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if Fermilab decides that the facts justify it, Fermilab may receive and act upon a proposal submitted before final payment under this subcontract.

**12.4** If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, Fermilab shall have the right to prescribe the manner of the disposition of the property.

## **13. EXTRAS**

Except as otherwise provided in this subcontract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by Fermilab.

## **14. PROTECTION OF BUILDINGS, EQUIPMENT, AND VEGETATION**

The Subcontractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the laboratory site. If the Subcontractor's failure to use reasonable care causes damage to any of this property, the Subcontractor shall

replace or repair the damage at no expense to Fermilab. If the Subcontractor fails or refuses to make such repair or replacement, the Subcontractor shall be liable for the cost, which may be deducted from the subcontract price.

## **15. FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT – PRICE ADJUSTMENT**

**15.1** This clause applies to both subcontracts subject to area prevailing wage determinations and subcontracts subject to Subcontractor collective bargaining agreements.

**15.2** The Subcontractor warrants that the prices in this subcontract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

**15.3** The subcontract price or subcontract unit price labor rates will be adjusted to reflect increases or decreases by the Subcontractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with –

- (a) An increased or decreased wage determination applied to this subcontract by operation of law; or
- (b) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this subcontract, affects the minimum wage, and becomes applicable to this subcontract under law.

**15.4** Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph 15.3 of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

**15.5** The Subcontractor shall notify Fermilab of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by Fermilab in writing. The Subcontractor shall promptly notify Fermilab of any decrease under this clause, but nothing in the clause shall preclude Fermilab from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that Fermilab may reasonably require. Upon agreement of the parties, the subcontract price or subcontract unit price labor rates shall be modified in writing. The Subcontractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

**15.6** Fermilab or an authorized representative shall, until the expiration of 3 years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Subcontractor.

*NOTE: The following paragraphs 15.7, 15.8, 15.9 and 15.10 apply only in the event this subcontract is a multiple year subcontract or a subcontract containing an option(s) to renew for an additional period(s). In that event, they apply in lieu of paragraphs 15.3, 15.4, and 15.5 above.*

**15.7** The wage determination, issued under the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year subcontract or the beginning of each renewal option period, shall apply to this subcontract. If no such determination has been made applicable to this subcontract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206) current on the anniversary date of a multiple year subcontract or the beginning of each renewal option period, shall apply to this subcontract.



**15.8** The subcontract price or subcontract unit price labor rates will be adjusted to reflect the Subcontractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Subcontractor as a result of:

- (a) the Department of Labor wage determination applicable on the anniversary date of multiple year subcontract, or at the beginning of the renewal option period. For example, the prior wage determination required a minimum wage rate of \$4.00 per hour. The Subcontractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Subcontractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;
- (b) an increased or decreased wage determination otherwise applied to the subcontract by operation of law; or
- (c) an amendment to the Fair Labor Standards Act of 1938 that is enacted after the award of this subcontract, affects the minimum wage, and becomes applicable to this subcontract under law.

**15.9** Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph 15.8 of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general administrative costs, overhead, or profit.

**15.10** The Subcontractor shall notify Fermilab of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by Fermilab. The Subcontractor shall promptly notify Fermilab of any decrease under this clause, but nothing in this clause shall preclude Fermilab from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that Fermilab may reasonably require. Upon agreement of the parties, the subcontract price or subcontract unit price labor rates shall be modified in writing. The Subcontractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

## **16. INSPECTION OF SERVICES**

**16.1** Definitions. "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

**16.2** The Subcontractor shall provide and maintain an inspection system acceptable to Fermilab covering the services under this subcontract. Complete records of all inspection work performed by the Subcontractor shall be maintained and made available to Fermilab during subcontract performance and for as long afterward as the subcontract requires.

**16.3** Fermilab has the right to inspect and test all services called for by the subcontract, to the extent practicable at all times and places during the term of the subcontract. Fermilab shall perform inspections and tests in a manner that will not unduly delay the work.

**16.4** If Fermilab performs inspections or tests on the premises of the Subcontractor or a sub-subcontractor, the Subcontractor shall furnish, and shall require sub-subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe

and convenient performance of these duties.

**16.5** If any of the services do not conform with subcontract requirements, Fermilab may require the Subcontractor to perform the services again in conformity with subcontract requirements, at no increase in subcontract amount. When the defects in services cannot be corrected by reperformance, Fermilab may (1) require the Subcontractor to take necessary action to ensure that future performance conforms to subcontract requirements and (2) reduce the subcontract price to reflect the reduced value of the services performed.

**16.6** If the Subcontractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with subcontract requirements, Fermilab may (1) by subcontract or otherwise, perform the services and charge to the Subcontractor any cost incurred by Fermilab that is directly related to the performance of such service or (2) terminate the subcontract for default.

## **17. BUY AMERICAN ACT – SUPPLIES**

**17.1** DEFINITIONS. As used in this clause –

"Component" means any item supplied to Fermilab as part of an end item or of another component.

"Cost of components" means –

- (1) For components purchased by the Subcontractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Subcontractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

"Domestic end product" means –

- (1) An unmanufactured end product mined or produced in the United States; or
- (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

"End product" means supplies delivered under a line item of Fermilab subcontract.

"Foreign end product" means an end product other than a domestic end product.

"United States" means the 50 States, the District of Columbia, and outlying areas (see paragraph 1.2 of the FL-1).

**17.2** The Buy American Act (41 U.S.C. 10a-10d) provides a preference for domestic end products for supplies acquired for use in the United States.

**17.3** For a list of foreign articles that Fermilab will treat as domestic for this subcontract, see FAR 25.104.

**17.4** The Subcontractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled "Buy American Act Certificate."

## **18. WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES**

**18.1** The Subcontractor shall comply with the requirements of the "DOE Contractor Employee Protection Program" at 10 CFR Part 708 for work performed under this subcontract that involves or is directly related to activities on the Fermilab site or any other DOE-owned or -leased site.

**18.2** The Subcontractor shall insert or have inserted the substance of this clause, including this paragraph 18.2, in sub-subcontracts at all tiers for work to be performed under this subcontract that involves or is directly related to activities on the Fermilab site or any other DOE-owned or -leased site.